THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NO.7787/1996 AND BATCH

DATE:11.08.2005

W.P.NO.7787/1997

Between:

K.Veera Reddy and another

Petitioner

And

Hyderabad Urban Development Authority (HUDA) rep. By its Vice chairman, Piga Palace, Begumpet, Hyderabad and another.

W.P.NOs.7787 OF 1996, 9697 & 12372 OF 1998 AND 2043 & 3117 OF 1999

C O M M O N O R D E R

Since the facts and issue involved in all these writ petitions is similar, they are being disposed of by this common order.

2 . The facts in W.P.No.9697 of 1997 are being referred to for the sake of convenience.

3 . In this writ petition, the petitioner sought for a writ of Mandamus declaring the action of the respondent – Hyderabad Urban Development Authority (for short HUDA) in making demand of rent at Rs.1.50 ps. per square feet per month for the shops allotted to the petitioners at Tarnaka Commercial Complex, as illegal and arbitrary and without jurisdiction and further to direct the respondent to collect Re.1/-

per sft. from the date of allotment in 1984, after actual measurement of the usable area.

4. This court while admitting the writ petition on 9.4.1998, granted interim stay of recovery of the impugned amount on the condition of petitioners each depositing 1/4th of the arrears within a period of four weeks from the date of receipt of a copy of the order and that the petitioners shall continue to pay the rent at the rate of Rs.1.50/- per square feet from 1.1.1998 on wards.

5. The case of the petitioners is that pursuant to the notification issued by HUDA for allotment of the shops in first phase, during the year 1978-79, some persons have applied and the allotment was made in the year 1981 at the rate of Re.1/- per square feet. During the year 1983-84, another notification was issued for the 2nd phase shops and the petitioners have applied and the allotment was made during the year 1984 at the rate of Rs.2/- per square feet and 0.15 ps. for maintenance per sft. On the representation made by the petitioners to the Vice-Chairman of HUDA, the rate was reduced from Rs.2/- to Rs.1/- per sft. as per resolution dated 29.1.1985 with retrospective effect from the date of allotment. Subsequently, through resolution dated 7.10.1985, the authority ignoring the order of Vice-Chairman, again demanded the petitioners to pay Rs.2/- per sft. without giving any notice. Challenging the same, the petitioners along with others filed writ petition and when they were dismissed, writ appeals were filed and a Division Bench of this Court by order dated 4.10.1993 in W.A.Nos.64 and 144 of 1994, held that enhancement of rent from Re.1/- to Rs.2/- is without any notice and therefore, directed the HUDA to issue fresh notices and after enquiring in the matter, proceed to collect the rent. The Division Bench also gave liberty to the allottees of shops, to raise all the points that are available to them in the said enquiry. Pursuant to the orders in writ appeals, the HUDA issued notices on 1.8.1996 and the petitioners submitted their representations stating that since the 1985 allottees were paying rent at the rate of Re.1/- per sft. the enhancement of rent is arbitrary and, therefore requested to stop all proceedings pursuant to the notice issued by HUDA. In response to the representations of the petitioners, the HUDA informed the petitioners that as per the meeting held on 24.9.1997, it was resolved to reduce the rent to Rs.1.50 per sft. per month payable from the date of allotment i.e., from the year 1984. Again the petitioners made a representation on 1.10.1997 stating that as the subsequent allottees were paying at the rate of Re.1/- per sft., fixation of rent at the rate of Rs.1.50 per month from the date of original allotment, is

arbitrary and agreed to pay the enhanced rent of Rs.1.50/- per sft. from 1.11.1997. The said request of the petitioners was rejected by letter dated 29.1.1998 and the impugned proceedings for recovery of rent at the rate of Rs.1.50 per sft. with retrospective date was issued. It is stated that the HUDA issued notices on 31.10.1097 to 1st and 3rd phases allottees, demanding them to pay Re.1/- per sft only. Therefore, the case of the petitioners is that fixing rent at Rs.1.50/- per sft. and Re.0.40 ps. for maintenance, without providing any proper amenities is unjust and discriminatory. It is further stated that the enhancement of rents is contrary to the HUDA Shops Rental Regulations of 1980 (for short hereinafter referred to as '1980 regulations'). Hence, the present writ petition.

6 . The respondents – HUDA filed a detailed counter affidavit and denied the allegations with regards to discrimination. It is stated that the petitioners did not pay 1/4th of the arrears as per the interim orders of this court. In the counter it is stated that under 1980 Regulations 3, 2 and 4, the Authority has got only the power to fix the rent and not the Vice Chairman. The Vice Chairman has reduced the rent to Re.1/- from Rs.2/-, subject to the approval by the authority. It is stated that pursuant to the directions in writ appeals, the petitioners were issued notices dated 1.8.96 and on receipt of the explanations, the authority by its meeting held on 24.9.1997 decided to fix Rs.1.50 per sft. instead of Rs.2/- per sft. from the date of allotment and the petitioners though agreed for this reduction, wanted to pay from 1.11.1997 instead of from the original date of allotment. It is stated that when once the petitioners have accepted to pay the rents at reduced rents, it has to be from the date of original allotment. It is further stated that the petitioners pursuant to the advertisement in newspapers for allotment have accepted to pay Rs.2/- per sft and entered into agreements and now after reduction of the rents, they are estopped from seeking further reduction, since in fact they have agreed for rent at Rs.2/- per sft. The allegation with regard to discrimination is also denied stating that the I and III phase allottees were made to pay at the rate fixed in advertisement i.e., at Re.1/- and wherein in case of petitioners, the rent was fixed at Rs.2/- and the petitioners have accepted for the same. With regard to fixing of maintenance charges at 0.40 ps. it is stated that it varies from time to time for providing amenities and considering all the factors, the authority has fixed the charges and the same cannot be held to be arbitrary. With these averments, the HUDA sought for dismissal of the writ petitions.

7 . During the course of hearing, the petitioners filed an affidavit expressing their

willingness to pay the rental charges as per Regulation 17 of 1980 Regulations, as under:

1984 to 1989 Re.1-00

1989 to 1994 Rs.1.50

1994 to 1999 Rs.2.25

1999 to 2004 Rs.3.40

2004 to 2009 Rs.5.10

8. The learned counsel for the petitioners mainly contended that for the allottees of phases I and III, the charges were fixed at Re.1/- per sft., but whereas for the II phase allottees, the charges were fixed at Re.1.50/- and this is discriminatory and the same amounts to violation of Article 14 of the Constitution of India. He submitted that when the rent was reduced from Rs.2/- to Rs.1.50/- the same should be made prospective and the petitioners cannot be made to pay from the original date of allotment in the year 1984 and this is arbitrary. He further contended that Vice Chairman of HUDA is the competent to fix the rent and when once he has fixed the rent at Re.1/- by reducing from Rs.2/- as per meeting held on 29.1.1985, the Authority cannot ignore the same and fix again at Rs.2/-. With these contentions, the learned counsel sought for setting aside the recovery proceedings initiated by HUDA.

9. On the other hand, the learned Standing Counsel for HUDA submitted that pursuant to the notification for allotment, the petitioners have agreed to pay rent at Rs.2/- per sft. and accordingly entered into agreements. Therefore, having agreed to pay the rent as per the notified rate and entered into agreements, the petitioners are estopped from raising any objection with regard to rate of rent. He submitted that pursuant to the directions in writ appeals, the petitioners were given notices and after considering their representations and the relevant material, the rent was reduced from Rs.2/- to Rs.1.50 ps. and the petitioners are liable to pay the reduced rent from the date of original allotment and they cannot seek for any concession and this is not permissible. He submitted that by issuing the notices, principles of natural justice have been fully complied with. He submitted that as per Regulations 14, 16, 17, 19, 20 and 22 of Hyderabad Urban Development Authority (Shops) Rental Regulations, 1996, which were issued in supersession of 1980 Regulations, the

period of lease is only three years and if the allottees fail to make any representation for renewal of leases, they shall vacate the shops and handover the vacant possession and in case of belated payment of rent or any other amount, they are liable to pay interest at the rate fixed by the Vice Chairman and that for recovery of arrears and other amounts due to the lessor, the provisions of Revenue Recovery Act, 1864 shall be invoked. He contended that as per Regulation 17 of 1980 Regulations, the petitioners, neither sought for renewal, nor vacated the premises and therefore, they have absolutely no right to enjoy the premises and they are mere encroachers of the Government property. He submitted that under 1980 Regulations, the Authority is the competent to fix the rent and not the Vice Chairman. He further submitted that normally this court exercising its jurisdiction under Article 226 of the Constitution of India, will not interfere in the matters like fixing the rents and policy decisions. For this proposition, he relied on the judgments of the Apex Court in UNION OF INDIA v. CYNAMIDE INDIA LTD. and RAYALASEEMA PAPER MILLS LTD. GOVT. OF A.P.

10. In view of the above facts and circumstances, the point that falls for my consideration is whether this court under writ jurisdiction can examine the issue of price fixation and the discrimination complained thereof and also direct the authorities to collect the revised rate prospectively, other than from the date of original agreement?

11. The main contention of the petitioners is that fixing rent at the rate of Rs.2/- per sft. to them, who are second phase of allottees and fixing Re.1/- for first and third phase of allottees is discriminatory and secondly their contention is that even the reduced rent of Rs.1.50 per sft. the petitions are entitled to pay prospectively i.e., 1.11.1997 and not from the retrospective date of original allotment, as they earlier paid the rent as reduced by the Vice Chairman of HUDA through proceedings dated 29.1.1985, as he is the competent authority to fix the rents.

12. With regard to first contention it is to be seen that it is well settled that the jurisdiction of this court in interfering with the process of price fixation by statutory authorities is very limited. In fact no rule or regulations is brought to the notice of this court, which lays down the criteria for fixation of rents. In the absence of same, it is difficult, to interfere with the process of price fixation, as it is in the domain of the

statutory authorities. Considering this type of situation, in the decision relied on by the Standing Counsel for HUDA in CYNAMIDE INDIA LTD. case (cited 1 supra), the Apex Court held as under:

> "4. We start with the observation ' Price-fixation is neither the function nor the forte of the Court'. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not revaluate the considerations even if the prices are demonstrably injurious to some manufactures or producers. The court will, of course, examine if there is any hostile discrimination. That is a different 'cup of tea' altogether."
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> 32. . . . . As we pointed out earlier, these are all matters which should legitimately be raised in the review application, if there is any substance in them. These are not matters for investigation in a petition under Art. 226 of the Constitution or under Art. 32 of the Constitution. Despite the pressing invitation of Shri Diwan to go into facts and figures and his elaborate submissions based on facts and figures, we have carefully and studiously refrained from making any reference to such facts and figures as we consider it outside our province to do so and we do not want to set any precedent as was supposed to have been done in Premier Automobiles (AIR 1972 SC 1690) though it was not so done and, therefore, needed explanation in later cases."

13. From the above it is clear that this Court exercising the writ jurisdiction generally does not interfere with the process of price fixation, as it is in the province of the legislature and the Apex Court in the above judgment has gone to the extent of observing that even if the price fixation is demonstrably injurious, the same cannot be revaluated. Further as already observed, no rule or regulations is brought to the notice of this court prescribing any criteria for fixation of rents. The Apex court in similar circumstances in RAYALASEEMA PAPER MILLS case (cited 2 supra) held at paragraph no.15 as under:

> "This court was examining the scope of judicial scrutiny in the matters of price fixation where it was governed by statutory provisions. The scope of judicial scrutiny would be far less where the price fixation is not governed by the statue or a statutory order. Where the legislature has prescribed the factors which should be taken into consideration and which should guide the determination of price, the courts would examine whether the considerations for fixing the price mentioned in the statute or the statutory order have been kept in mind while fixing the price and whether these factors have guided the determination. The courts would not go beyond that point. In the present appeals, there is no law, or any statutory provision laying down the criteria or the principles which must be followed, or which must guide the determination of rates of royalty. No doubt, any arbitrary action taken by the

> State would be subject to scrutiny by the courts because arbitrariness is the very antithesis of rule of law. But this does not mean that this court would act as an Appellate Authority over the determination of rates of royalty by the Government. The Government is the owner of the products….".

14. Therefore, in view of the above two judgments of the Apex Court, it is clear that this court while exercising the jurisdiction under Article 226 of the Constitution of India, cannot interfere with the process of price fixation. Hence, the contention with regard to arbitrariness in fixation of rent by HUDA is hereby rejected.

15. Coming to the alternative prayer of the petitioners that they may be permitted to pay the revised rent at the rate of Rs.1.50 per sft from 1.11.1997 is concerned, it is to be seen that the petitioners originally as per the notification agreed to pay the rent at the rate of Rs.2/- as notified and subsequently the Vice Chairman, as per the meeting held on 29.1.1985, decided to reduce the rent from Rs.2/- to Rs.1/-. The case of the petitioners is that the Vice Chairman is the competent authority to fix the rent and whereas the case of HUDA the competent authority to fix the rent under 1980 Regulations, is Authority. The proceedings in file No.23190/EMU/A3/83 dated 17.5.1985, reads as under:

> "The allottees have requested the Vice-chairman to reduce the rent from Rs.2.00 per sq. ft., to Re.1/- per sq. sft. as they were incurring losses due to lack of business.
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> It was decided to reduce the rent to Rs.1.00 per sq. ft. to all shops with retrospective effect. Hence, the matter is placed before the HUDA meeting for ratification of the action taken by the Vice Chairman."

16. This letter shows that the action taken by Vice Chairman in reducing the rent from Rs.2/- to Re.1/- was placed before the Authority for ratifications. Therefore, it is clear that the Hyderabad Urban Development Authority is the competent to fix the rent. But however, as per the revised Regulations, the Vice Chairman is made the Authority to fix the rent. However, the said Authority by proceedings No.EMU/A3/9557/77 dated 8.11.1985 refused the ratify the action taken by V.C. and asked the tenants to pay the rent at the rate of Rs.2/- per sft. This shows that the contention of the petitioners that Vice Chairman is the competent authority to fix the rents as per 1980 Regulations, is not tenable.

17. It is to be further seen that as the petitioners have entered into agreements with

HUDA accepting to pay the rent at Rs.2-00 per sft., they are estopped from disputing the rent. However, pursuant to the Division Bench decision, petitioners were issued notices and then rent was fixed at Rs.1.50 ps. and they were asked to pay the same for the date of original allotment and the petitioners made a representation that they are ready to pay from 1.11.1997 and not from the original allotment; and by the impugned letter dated 29.1.1998, their request was rejected. As per the agreements under 1980 Regulations, the lease period was five years and as per Regulation 17, the lease can be renewed without going for public auction if the present lessee give their willingness within three months before the expiry of the existing lease. Here the contention of the learned Standing Counsel for HUDA is that the petitioners did not give their willingness and that they are continuing by virtue of the orders of this court and that they are mere encroachers. The further case of the respondent is that the petitioners did not comply with the interim directions of this court by paying 1/4th of the areas.

18. It is to be further seen that the petitioners in the writ petitions stated that they are willing to pay the reduced rent of Rs.1.50/- per sft. from 1.11.1997. But during the course of hearing, they filed an affidavit stating that they are ready to pay Rs.1.50 per sft. from 1989 to 1994. Therefore, it shows that they are willing to pay even from an earlier date, than the one stated in the writ petition i.e., 1.11.1997. However, their case is that they are incurring losses in business. The concession made before this court, should have been before the competent authority.

19. The learned Standing Counsel appearing for HUDA submitted that if the allottees, who are in possession, are agreeable for the rents fixed by HUDA, they may make a representation seeking renewal of their leases as per Regulation 17, and the authorities may consider the same, before going for public auction.

20. Though I do not find any merit in these writ petitions, in view of submissions made by either party, the writ petitions are disposed of with following directions:

" The petitioners, who are in possession of the shops, may make applications for renewal of leases and the same may be considered by HUDA in accordance with Regulations. Further since the petitioners have agreed to pay the rent at the rate of Rs.1.50 per sft. from 1989, the respondents may consider the same in a pragmatic view."

21. In the circumstances of the case, there shall be no order as to costs.

AVS ----------

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